

take the necessary initiative to protect consumers' privacy. But we should not neglect to notice that industry is making progress. When the Federal Trade Commission testified before the Commerce Committee about this time last year, it cited studies showing that roughly two-thirds of some of the busiest Web sites had some form of disclosure of privacy policies. This year, the FTC reports that 90 percent of sites have disclosure policies. Likewise, last year the FTC found that only 10 percent of sites implemented the four core privacy principles of notice, choice, access and security. This year the FTC reports that figure at 20 percent. That is still not high enough, but this is a five-year-old industry. We've seen significant improvements without the need for intrusive congressional intervention. It is simply too soon to write off a market driven approach to privacy.

Most of us don't think about it. But I want to make a point about the distinction between the offline and online world. When you go to the supermarket and you walk into any store and swish your card through the checkout scanner, that scanner has a record of precisely what you bought. In effect, today in the offline world, people are getting extraordinarily detailed information about what you are purchasing. The question, therefore, is to be asked: Is there some kind of preference about what happens at the supermarket, or any other kind of store, and is that somehow less protected than the choice you make online? Likewise, catalog companies compile and use offline information to make marketing decisions. These companies rent lists compiled by list brokers. The list brokers obtain marketing data and names from the public domain and governments, credit bureaus, financial institutions, credit card companies, retail establishments, and other catalogers and mass mailers.

I have been collecting the catalogs that I have received just in the last few weeks from not one online purchase, and I have been targeted by about 50 catalogs just on the basis of offline purchases that have been made and not because of an online existence.

Even in politics, off-line privacy protections may be less than those we are already seeing online. For example, we all know that campaigns can and do get voter registration lists from their states and can screen based on how often individuals vote. They will take this data and add names from magazines—Democrats could use the New Republic and Republicans might choose the National Review—and advocacy groups, and target all of them. With those combined lists, campaigns decide which potential voters to target for which mailings. The campaigns will also often share lists with each other and with party committees. All of this goes on offline.

On the other hand, when I go to the shopping mall and I walk into a store and look at five different items, five sweaters, or five pairs of pants, whatever it may be, and I don't buy any of them, there is no record of them at all. But there is a record of that kind of traveling or perusal, if you will, with respect to the web.

There are clearly questions that we have to resolve with respect to what kind of anonymity can be protected with respect to the online transaction.

I just do not think this is the moment for us to legislate. I think we need to study the issue of access very significantly.

There is a general agreement that consumers should have access to information that they provided to a web site. We still don't know whether it is necessary or proper to have consumers have access to all of the information that is gathered about an individual.

Should consumers have access to click-stream data or so-called derived data by which a company uses compiled information to make a marketing decision about the consumer? And if we decide that consumers need some access for this type of information, is it technologically feasible? Will there be unforeseen or unintended consequences such as an increased risk of security breaches? Will there be less rather than more privacy due to the necessary coupling of names and data?

Again, I don't believe we have the answers, and I don't believe we are in a position to regulate until we have thoroughly examined and experienced the work on those issues.

I disagree with those who think that this is the time for heavy-handed legislation from the Congress. Nevertheless, I believe we can legislate the outlines of a structure in which we provide some consumer protections and in which we set certain goals with which we encourage the consumer to familiarize themselves while we encourage the companies to develop the technology and the capacity to do it.

Clearly, opting in is a principle that most people believe ought to be maximized. Anonymity is a principle that most people believe can help cure most of the ills of targeted sales. For instance, you don't need to know if it is John Smith living on Myrtle Street. You simply need to know how many times a particular kind of purchase may have been made in a particular demographic. And it may be possible to maintain the anonymity and provide the kind of protection without major legislation. It seems to me that most companies will opt for that.

In addition to that, we need to resolve the question of how much access an individual will have to their own information, and what rights they will have with respect to that.

Finally, we need to deal with the question of enforcement, which will be

particularly important. It is one that we need to examine further. I believe that there is much for us to examine. We should not, in a sense, intervene in a way that will have a negative impact on the extraordinary growth of the Internet, even as we protect privacy and establish some principles by which we should guide ourselves. I believe that the FTC proposal reaches too far in that regard.

I hope my colleagues in the Senate will join me in an effort to embrace goals without the kind of detailed intrusion that has been suggested.

I thank the Chair.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF BRADLEY A. SMITH, OF OHIO, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION

The PRESIDING OFFICER. Under the previous order, the hour of 11:30 a.m. having arrived, the Senate will proceed to executive session.

The legislative clerk read the nomination of Bradley A. Smith, of Ohio, to be a member of the Federal Election Commission.

Mr. McCONNELL. Mr. President, based on the caricatures of Professor Bradley Smith, one would think he must have horns and a tail. I unveil a picture of Brad Smith and his family in the hopes of putting to rest some of these rumors.

Let me quote Professor Smith himself on this point, talking about the experience he has had over the last 10 months. He said: In the last 10 months since my name first surfaced as a candidate, certain outside groups and editorial writers opposed to this nomination have relied on invective and ridicule to try to discredit me. Among other things, some have likened nominating me to nominating Larry Flynt, a pornographer, to high office. Nominating me has been likened to nominating David Duke, one-time leader in the Ku Klux Klan, to high office. Nominating me has been likened to nominating Theodore Kaczynski, the Unabomber, a murderer, to high office.

Professor Smith went on and said: Just this week I saw a new one. I was compared to nominating Jerry Springer, which is probably not a good comparison since Springer is a Democrat. Other critics have attempted ridicule, labeling me a "flat Earth Society poobah," and more.

He says: I say all this not by way of complaint because I'm sure that Members—he is referring to Members of the